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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,290	06/20/2006	Helen Braven	ATLAS 9452 US	5797
39843 7590 03/17/2009 BELL & ASSOCIATES 58 West Portal Avenue No. 121 SAN FRANCISCO, CA 94127				
EXAMINER				
MARTIN, PAUL C				
ART UNIT		PAPER NUMBER		
1657				
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03/17/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/562,290

**Applicant(s)**

BRAVEN ET AL.

**Examiner**

PAUL C. MARTIN

**Art Unit**

1657

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19-23 and 25-36 is/are pending in the application.
- 4a) Of the above claim(s) 32-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-23 and 25-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI.08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: Notice to Comply; CRF errors

### **DETAILED ACTION**

Claims 19-23 and 25-36 are pending in this application, Claims 32-36 are acknowledged as withdrawn effectively **without** traverse in the response of 14 Sep 2007, Claims 19-23 and 25-31 were examined on their merits.

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/30/09 has been entered.

### ***Specification***

The application contains sequence disclosures that are encompassed by the definition for nucleotide and/or amino acid sequences set forth in 37 C.F.R. 1.821(a)(1) and (a)(2). However, the application fails to comply with the requirements of 37 C.F.R. 1.821(a)(1) and (a)(2) for the reasons set forth in the attached Notice to Comply With

Requirements for Patent Applications Containing Nucleotide Sequence Disclosures  
And/Or Amino Acid Sequence Disclosures.

This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 C.F.R. § 1.821(a)(1) and (a)(2). However, this application fails to comply with one or more of the requirements of 37 C.F.R. § 1.821 through 1.825 for one or more of the reasons set forth on the attached form "Notice To Comply With Requirements For Patent Applications Containing Nucleotide Sequences And/Or Amino Acid Sequence Disclosures". Wherein attention is directed to paragraph(s) §1.82 (c) and (e). Although an examination of this application on the merits can proceed without prior compliance, compliance with the Sequence Rules is required for the response to this Office action to be complete. This objection, which was provisionally withdrawn in the last Action, was dependent upon Applicant's Compliance with the reasons set forth on the Notice to Comply. As the CRF submitted 06/30/08 was found to be flawed by the Office on 10/14/08 the objection is re-instated in full.

***Response to Amendment***

The Declaration under 37 CFR 1.132 filed 01/30/09 is insufficient to overcome the rejection of claims 19-23 and 25-31 based upon 35 U.S.C. § 103(a) in view of Braven *et al.* (US 2005/0221315 A1) as set forth in the last Office action because: The Declaration indicates that the inventive disclosure of (US 2005/0221315 A1) was by H.

Braven and R. Keay. However, the instant application is a different inventive entity from US 2005/0221315 A, having 3 co-inventors: H. Braven, R. Keay and S. Flower.

The Declaration fails to show that the relevant portions of the US 2005/0221315 A reference (two inventors) originated with or were obtained from applicant (3 inventors). That is, the Declaration fails to indicate that while S. Flower is a co-inventor of some claims in the instant invention, his co-inventorship does not co-extend to the claimed subject matter disclosed in the US 2005/0221315 A reference and subject to the rejections under 103(a) set forth *infra*.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19, 25, 26, 27 and 31 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Hugli (US 6,235,494 B1) in view of Braven *et al.* (US 2005/0221315 A1) for reasons of record set forth in the Prior Actions.

Claims 19, 20, 22, 25, 26 and 27 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Ludin *et al.* (US 6,495,336 B1) in view of Braven *et al.* (US 2005/0221315 A1) for reasons of record set forth in the Prior Actions.

Claims 19, 20, 22, 25, 26, 28, 29 and 30 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagy *et al.* (2000) in view of Braven *et al.* (US 2005/0221315 A1) for reasons of record set forth in the Prior Action.

Claims 19-22, 25, 26, 28, 29 and 30 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagy *et al.* (2000) in view of Braven *et al.* (US 2005/0221315 A1) and further in view of Forrest *et al.* (US 4,978,610) for reasons of record set forth in the Prior Action.

Claims 19, 20, 22, 23, 25, 26, 28, 29 and 30 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagy *et al.* (2000) in view of Braven *et al.* (US 2005/0221315 A1) and further in view of Nicholson *et al.* (US 4,456,337) for reasons of record set forth in the Prior Action.

### ***Response to Arguments***

Applicant's arguments filed 01/30/09 have been fully considered but they are not persuasive. The Applicant argues that the Declaration under 37 C.F.R. § 1.132 by one of the inventors stating that along with one other co-inventor, are the inventors of the published patent application US 2005/0221315 A1 and that the invention disclosure was by them and not by another.

The Applicant states that this is sufficient to disqualify the reference as Prior Art under 35 U.S.C. § 102(e) and therefore 35 U.S.C. § 103(a) (Remarks, Pg. 4, Lines 16-22 and Pg. 5, Lines 1-2).

This is not found to be persuasive as the Declaration was found to be insufficient to overcome the rejections for the reasoning provided above.

Applicant appears to be attempting to disqualify the reference under 35 U.S.C. § 103(c) as prior art in a rejection under 35 U.S.C. § 103(a) as subject matter being Commonly Owned or subject to a Joint Research Agreement (Remarks, Pg. 5, Lines 2-4).

This is not found to be persuasive, as no evidence has been provided to support this assertion. The MPEP states:

Applications and patents will be considered to be owned by, or subject to an obligation of assignment to, the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or

subject to an obligation of assignment to, the same person(s) or organization(s). In order to overcome a rejection under 35 U.S.C. 103(a) based upon a reference which qualifies as prior art under only one or more of 35 U.S.C. 102(e), (f), or (g), via the CREATE Act, the applicant must comply with the statute and the rules of practice in effect.

### ***Conclusion***

No Claims are allowed.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of



the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL C. MARTIN whose telephone number is (571)272-3348. The examiner can normally be reached on M-F 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paul Martin  
Examiner  
Art Unit 1657

03/11/09

/JON P WEBER/  
Supervisory Patent Examiner, Art Unit 1657